

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**CHACE FRAZIER AND MISTY
PEIKOFF**

Plaintiffs,

v.

**KM HOLDINGS GRANBURY, LLC AND
JPNS PROPERTIES, LLC,**

Defendants.

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Civil Action No. 4:23-cv-00761-O

JOINT MOTION TO MODIFY SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16(b), Plaintiffs Chace Frazier and Misty Peikoff (“Plaintiffs”), and Defendants KM Holdings Granbury, LLC and JPNS Properties, LLC (“Defendants”) (collectively, the “Parties”), by and through their undersigned counsel, hereby file this Joint Motion to Modify Scheduling Order, and as the basis of this joint motion would show the Court as follows:

1. This case was initiated with the filing of Plaintiffs’ Complaint on July 21, 2023. Thereafter, following initial disclosures, the Parties engaged in and have completed substantial written discovery.

2. On October 9, 2023, the Court entered its Scheduling Order, which currently governs the dates and deadlines applicable to this case and which sets the case for trial on the Court’s August 5, 2024, docket. The Court’s Scheduling Order set the Parties’ mediation deadline for January 30, 2024; the discovery completion deadline for February 16, 2024; and the dispositive motions deadline for March 1, 2024. *See* ECF No. 14.

3. The Parties have worked diligently to comply with the deadlines and dates set forth in the Court's Scheduling Order. However, due to circumstances outside of the Parties' control, they have not been able to comply with the mediation deadline set forth in the Scheduling Order – Defendants' lead counsel was unable to work for two weeks in January after contracting COVID-19 and the flu, and Plaintiffs' lead counsel was unavailable in portions of January due to an urgent need to attend to a family illness.

4. Accordingly, the Parties still need to complete additional fact and expert witness discovery in this matter prior to engaging in meaningful settlement discussions and mediation, and are unable to do so with the mediation, discovery, and dispositive motions deadlines currently set by the Court's Scheduling Order. The Parties agree that mediation is a priority in this case, and they have agreed upon a mediator.

5. Therefore, the Parties respectfully move the Court to modify the Scheduling Order by extending the mediation deadline to March 1, 2024, the discovery completion deadline to February 29, 2024, and the dispositive motion deadline to March 15, 2024. The Parties agree that they will be able to fully prepare their case for trial, as well as mediation and settlement discussions, with this proposed modification of the Scheduling Order.

6. Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a scheduling order may be modified for good cause, and with the judge's consent. Fed. R. Civ. P. 16(b)(4). Good cause exists to modify a scheduling order where the schedule cannot reasonably be met despite the diligence of the parties seeking extension. See *Borden v. United States*, 537 Fed. App'x 570, 575 (5th Cir. 2013).

7. Here, as mentioned above, the Parties agree that they still need to complete fact and expert witness discovery in this matter, and there are motions that may need to be filed

once discovery is complete. Furthermore, the Parties desire to mediate this case, and they respectfully request additional time to schedule and attend mediation. Due to Defendants' counsel's absence due to COVID-19 and the flu, and Plaintiffs' counsel's absence due to a family illness, the Parties have been unable to accomplish these tasks in accordance with the deadlines set forth in the Scheduling Order. The Parties have been diligent in conducting discovery in this case but agree that they cannot reasonably meet the current deadlines set forth in the Scheduling Order in order to adequately prepare their cases for trial, or to engage in meaningful settlement discussions and mediation.

8. Accordingly, the Parties respectfully request that the Court modify the current Scheduling Order by moving the mediation deadline to March 1, 2024, the discovery completion deadline to February 29, 2024, and the dispositive motion deadline to March 15, 2024. The Parties have conferred and agree that this modification will not cause prejudice to any party, and they do not believe the extension of the above deadlines will affect the trial setting in this matter.

WHEREFORE, Plaintiffs and Defendants respectfully request that the Court grant this Joint Motion to Modify Scheduling Order and modify the current Scheduling Order as set forth above.

Respectfully submitted,

/s/ James H. Birch

James H. Birch

Texas Bar No.: 00797991

jim.birch@steptoe-johnson.com

STEPTOE & JOHNSON PLLC

6900 N. Dallas Pkwy., Suite 600

Plano, Texas 75024

469-920-8216

Dylan T. Hughes

Texas Bar No.: 24129644

dylan.hughes@steptoe-johnson.com

STEPTOE & JOHNSON PLLC

500 North Akard Street, Suite 3200

Dallas, Texas 75201

214-251-8005 (T)

Attorneys for Defendants

AND

/s/ Douglas B. Welmaker

Douglas B. Welmaker

Texas Bar No. 00788641

Welmaker Law, PLLC

409 N. Fredonia, Suite 118

Longview, Texas 75601

doug@welmakerlaw.com

(512) 799-2048

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this case in accordance with the Federal Rules of Civil Procedure on this 9th day of February 2024.

/s/ James H. Birch

James H. Birch